

No. 16378 /

**United States
Court of Appeals
For the Ninth Circuit**

BURL MELTON HOWZE,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record

**Appeal from the United States District Court for the
Southern District of California
Northern Division.**

FILED

APR - 6 1959

PAUL P. O'BRIEN, CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

For Appellant:

J. B. TIETZ,
257 So. Spring Street,
Los Angeles 12, California.

For Appellee:

LAUGHLIN E. WATERS,
United States Attorney;

ROBERT JOHN JENSEN,
Assistant U. S. Attorney,
Chief, Criminal Division;

ROBERT D. HORNBAKER,
Assistant U. S. Attorney;
600 Federal Building,
Los Angeles 12, California.

United States District Court for the Southern
District of California, Northern Division

No. 3582-ND

UNITED STATES OF AMERICA,

Plaintiff,

vs.

BURL MELTON HOWZE,

Defendant.

September, 1958, Grand Jury

INDICTMENT

[U.S.C., Title 50, App., Sec. 462—Failure to report
to local board for civilian work.]

The grand jury charges:

Defendant Burl Melton Howze, a male person within the class made subject to selective service under the Universal Military Training and Service Act, registered as required by said Act and the regulations promulgated thereunder and thereafter became a registrant of Local Board No. 77, said Board being then and there duly created and acting, under the Selective Service System established by said Act, in Kern County, California, in the Northern Division of the Southern District of California; pursuant to said Act and the regulations promulgated thereunder, the defendant was clasified in Class I-O and was notified of said classification; thereafter, the defendant was ordered by Local

Board No. 77 to report on June 17, 1958, to said Local Board at 628 Bernard Street, Bakersfield, California, in Kern County, California, within the division and district aforesaid, to be given instructions to proceed to a place of employment for civilian work contributing to the maintenance of the national health, safety and interest; and defendant was further ordered by said Local Board No. 77 to report for such employment pursuant to said instructions and to remain in such employment for twenty-four (24) consecutive months or until such time as released or transferred by proper authority; that defendant reported to Local Board No. 77 on June 17, 1958, and was instructed to proceed and report to the Los Angeles County Department of Charities, 1200 North State Street, Los Angeles, California, in Los Angeles County, California, within the Central Division of the Southern District of California, on June 18, 1958, for work as an institutional worker in lieu of induction; that defendant reported to the Los Angeles County Department of Charities at the time and place so ordered, and at said time and place, the defendant knowingly failed and neglected to perform a duty required of him under the Universal Military Training and Service Act and the regulations promulgated thereunder in that he failed and neglected to remain in employment for twenty-four (24) consecutive months or until such time as released or transferred by proper authority.

A True Bill.

/s/ L. A. ADAMS,
Foreman.

/s/ LAUGHLIN E. WATERS,
United States Attorney.

[Endorsed]: Filed September 17, 1958.

[Title of District Court and Cause.]

MOTION FOR JUDGMENT
OF ACQUITTAL

The defendant moves the Court for a judgment of acquittal for each and every one of the following reasons:

1. The order of the local board for defendant to perform civilian work at Los Angeles County Department of Charities, and Sections 1660.1 and 1660.20 of the Selective Service regulations are in conflict with the Act in that they have enlarged on the Act and are contrary to the intent of Congress.

2. The Act, as construed and applied by the regulations and the order, is in violation of the Thirteenth Amendment of the United States Constitution because it calls for a private, non-federal labor draft for the performance of services that are neither exceptional nor related to national defense in time of war or during a declared emergency.

3. The Act, as construed and applied by the regulations and order, is contrary to the Fifth

Amendment to the Constitution because it deprives the defendant of due process of law.

4. The draft board violated defendant's rights under the Act and the Regulations to have his claim for an agricultural classification considered because it completely by-passed and skipped consideration of his evidence; it did not consider him for the "lowest" classification possible, which was II-C, but only for the sole classification in which it ever classified him, namely, I-O, erroneously following his suggestion (on SSS Form No. 100) that I-O was the classification he should have.

5. There is no evidence to show that the defendant is guilty as charged in the indictment.

6. The Government has wholly failed to prove a violation of the Act and Regulations by the defendant as charged in the indictment in that there is no showing that he was given a physical examination within one year of the order to report for civilian work.

7. That said motion is also based on such other grounds, not hereinabove included, as are set forth in defendant's Memo of Points and Authorities.

Respectfully submitted,

/s/ J. B. TIETZ,

Attorney for Defendant.

Dated: November 12, 1958.

[Endorsed]: Filed November 12, 1958.

United States District Court for the Southern
District of California, Northern Division

No. 3582-ND

UNITED STATES OF AMERICA,

vs.

BURL MELTON HOWZE.

JUDGMENT AND COMMITMENT

(USC 50, App. Sec. 462—Failure to report to
local board for civilian work.)

On this 12th day of November, 1958, came the attorney for the government and the defendant appeared in person and with his attorney J. B. Tietz.

It is Adjudged that the defendant has been convicted upon trial and judgment by the Court of the offense of: knowingly failed and neglected to perform a duty required of him under the Universal Military Training and Service Act in that he failed and neglected to remain in employment for twenty-four (24) consecutive months or until such time as released or transferred by proper authority, as charged in the Indictment; and the court having asked the defendant whether he has anything to say why judgment should not be pronounced and no sufficient cause to the contrary being shown or appearing to the Court,

It Is Adjudged that the defendant is guilty as charged and convicted.

It Is Adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of One (1) Year and One (1) Day in a place of imprisonment selected by the Attorney General.

It Is Ordered the defendant is granted a stay of execution until 5:00 o'clock p.m., November 25, 1958, and that defendant may remain on bond on file.

It Is Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

/s/ LEON R. YANKWICH,
United States District Judge.

[Endorsed]: Filed November 12, 1958.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Appellant, Burl Melton Howze, resides at Route 1, Box 108, Shafter, California.

Appellant's attorney, J. B. Tietz, maintains his office at 410 Douglas Building, 257 South Spring Street, Los Angeles 12, California.

The offense was failing to submit to induction,

U.S.C., Title 50 App., Sec. 462—Universal Military Training and Service Act, 1951.

On November 12, 1958, after a verdict of Guilty, the Court sentenced the appellant to one year and one day confinement in an institution to be selected by the Attorney General.

I, J. B. Tietz, appellant's attorney, being authorized by him to perfect an appeal, do hereby appeal to the United States Court of Appeals for the Ninth Circuit from the above-stated judgment.

/s/ J. B. TIETZ,
Attorney for Appellant.

Receipt of copy acknowledged.

[Endorsed]: Filed November 19, 1958.

[Title of District Court and Cause.]

EXTENSION OF TIME

For good cause shown, defendant is hereby given 50 additional days, to and including February 17, 1959, to prepare and docket the record on appeal.

Dated: December 18, 1958.

/s/ BURT HARRISON,
Judge.

[Endorsed]: Filed December 18, 1958.

[Title of District Court and Cause.]

CERTIFICATE BY THE CLERK

I, John A. Childress, Clerk of the above-entitled Court, hereby certify that the items listed below constitute the transcript of record on appeal to the United States Court of Appeals for the Ninth Circuit, in the above-entitled case:

A. The foregoing pages, numbered 1 to 11, inclusive, containing the original:

Indictment, filed 9/17/58.

Motion for Judgment of Acquittal.

Judgment.

Notice of Appeal.

Extension of time to docket record on appeal and order thereon.

Designation of Record on Appeal.

B. Plaintiff's Exhibit No. 1.

Dated: February 17, 1959.

[Seal] /s/ JOHN A. CHILDRESS,
Clerk;

By /s/ WM. A. WHITE,
Deputy Clerk.

[Endorsed]: No. 16378. United States Court of Appeals for the Ninth Circuit. Burl Melton Howze, Appellant, vs. United States of America, Appellee. Transcript of Record. Appeal from the United States District Court for the Southern District of California, Northern Division.

Filed: February 18, 1959.

Docketed: February 24, 1959.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the
Ninth Circuit.

United States Court of Appeals
for the Ninth Circuit

No. 16378

BURL MELTON HOWZE,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

STATEMENT OF POINTS ON WHICH AP-
PELLANT INTENDS TO RELY ON AP-
PEAL

Appellant will rely upon the following points in the prosecution of his appeal from the judgment entered in the above-entitled cause.

I.

There was no evidence to show that the defendant is guilty as charged in the indictment.

II.

The draft board violated defendant's rights under the Act and the Regulations to have his claim for an agricultural classification considered because it completely by-passed and skipped consideration of his evidence.

III.

The Act, as construed and applied by the regulations and the order to report for civilian work is

in violation of the Thirteenth Amendment of the United States Constitution because it calls for a private, nonfederal labor draft for the performance of services that are neither exceptional nor related to national defense in time of war or during a declared emergency.

/s/ J. B. TIETZ,
Attorney for Appellant.

Affidavit of Service by Mail attached.

[Endorsed]: Filed February 24, 1959.

